

DECLARATION, POWER OF ATTORNEY AND PETITION

As the below named inventors, we hereby declare that we verily believe we are the original and first inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled "Stent Having A Multiplicity of Closed Circular Structures" which is attached hereto.

We hereby state that we have reviewed and understand the contents of the attached specification and claims.

We acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, Section 1.56(a).

We hereby appoint Robert E. Fischell, a co-inventor as our attorney, with full power of substitution and revocation to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith.

We hereby declare that we are a citizens of the United States of America and that the address and residence for each of us are one and the same and are stated below under our names.

We hereby declare that all statements made herein of our own knowledge are true and that statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or any patent issued thereon.

Name: Robert E. Fischell
Robert E. Fischell
14600 Viburnum Drive
Dayton, MD 21036

Name: David R. Fischell
David R. Fischell
71 Riverlawn Drive
Fair Haven, N.J. 07704

Name: Tim A. Fischell
Tim A. Fischell
1018 Chancery Lane
Nashville, TN 37215

Date: Feb. 12, 1994

Date: Feb. 12, 1994

Date: Feb. 12, 1994

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Robert E. Fischell, et al. :
Serial No. : 09/596,074 : Group Art Unit #3731
Filed : 16 June 2000 : Examiner: ~~W. Lewis~~
Title : STENT HAVING A MULTIPLICITY : JAIN, RUBY
OF UNDULATING LONGITUDINALS

INFORMATION FROM RELATED LITIGATION
IN CONFORMANCE WITH MPEP 2001.06(C)

Honorable Commissioner of Patents
Washington, D.C. 20231

Sir:

Applicants, by the undersigned attorney, hereby provide information from related litigation which is being brought to the attention of the United States Patent and Trademark Office in accordance with to the duty of Applicants to inform the USPTO of any material information from such related litigation. Also identified and submitted herewith are U.S. Patent Nos. 5,109,090 and 5,135,536 and Japanese utility model application (Kokai) No. 6-41745 and an English translation thereof.

The Commissioner is authorized to charge \$180.00 processing fee pursuant to 37 CFR 1.17(p), any additional fees or deficiencies thereof to Deposit Account No. 23-0785.

Applicants filed a Patent Application, Serial No. 08/202,128 on February 25, 1994 before the U.S. Patent and Trademark Office. This Patent Application issued as U.S. Patent 5,643,312 on July 1, 1997.

During the pendency of the application that matured into the '312 patent, Applicants filed a Continuation Patent Application, Serial No. 08/864,221 on May 28, 1997. This Continuation Patent Application issued as U.S. Patent 5,879,370 on March 9, 1999.

During the pendency of the application that matured into the '370 patent, Applicants filed a Second Continuation Patent Application, Serial No. 09/263,518 on March 5,

1999. This Second Continuation Patent Application issued as U.S. Patent 6,086,604 on July 11, 2000.

During the pendency of the application that matured into the '604 Patent, Applicants filed a Third Continuation Patent Application, Serial No. on June 16, 2000. This Third Continuation Patent Application is now pending and is the captioned patent application.

The Assignee of the captioned application is Cordis Corporation, which is a subsidiary of Johnson & Johnson having a business address at 1 Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

Cordis Corporation sued Medtronic AVE, Inc., et al., in the United States District Court in and for the District of Delaware having a Civil Action No. 97-550 (SLR) and also sued Boston Scientific Corporation, et al., in the United States District Court in and for the District of Delaware having a Civil Action No. 98-197 (SLR).

In Civil Action No. 98-197 (SLR), Cordis Corporation alleged infringement by Boston Scientific Corporation, et al., of the '312 patent and the '370 patent, and Boston Scientific alleged, *inter alia*, that the '312 and '370 Patents were invalid and unenforceable for inequitable conduct. Civil Action No. 98-197 (SLR) was tried together with Civil Action No. 97-550 (SLR). Civil Action No. 97-550 (SLR), which involved other patents invented by different inventive entities from the '312 and '370 patents

A jury trial was undertaken from November 20-December 15, 2000 and all the asserted claims of the '312 and '370 patents were found valid except claim 26 of the '370 patent, which was found invalid for failing to meet the written description requirement of 35 U.S.C. §112. We are submitting the jury verdict form showing the jury's holding on infringement and validity of the asserted claims of the '312 and '370 patents. Post-trial motions were submitted by the parties.

The undersigned attorney is providing the entire trial transcript. Because the trial transcript is voluminous and contains allegations of infringement and validity of the claims of patents unrelated to the '312 and '370 patents, we have listed below the page numbers of the transcript that relate to the '312 and '370 patents:

November 20, 2000: 3-4, 10-13, 24, 28

November 21, 2000: 97, 121-22, 128-31, 140-44, 158-62, 184-86

November 27, 2000:	195-254, 260-301
November 28, 2000:	519-645
November 29, 2000:	816-48, 962-92, 998-1000
November 30, 2000:	1018-20, 1023-28, 1100-05, 1141-42
December 1, 2000:	1576-78
December 4, 2000:	1612-32, 1762-89, 1837-38
December 5, 2000:	1945-47, 2068-70, 2120-28
December 6, 2000:	2231-2285, 2335-42, 2368-75
December 7, 2000:	2523-25, 2552-58, 2579, 2583, 2631-33, 2650, 2671-73, 2685, 2687-89, 2695, 2710-13, 2725, 2727, 2736-41, 2746-47, 2750, 2758, 2764-66
December 8, 2000:	2777-78, 2782-83, 2787-807
December 11, 2000:	2817-22, 2894-95
December 12, 2000:	3001-03, 3024-25
December 14, 2000:	3493-94, 3512, 3514, 3517, 3607-08, 3867

Subsequent to the jury trial, the Judge held a hearing with relation to inequitable conduct. The portion of the hearing relating to the '312 and '370 patents in this matter was held on February 9 and 12, 2001. Relevant portions of those hearing dates, i.e., pp. 825-1030, are submitted herewith. Post trial briefs on inequitable conduct were submitted by the parties.

The Judge issued an Order and an Opinion on March 28, 2002 related to the post trial motions and the inequitable conduct issues, copies of which are submitted herewith. The Judge's Order indicates that the '370 patents are unenforceable for reasons set forth on pages 77-83 and 88-90 of the Opinion. Cordis Corporation does not agree with this ruling by the Judge and is considering an appeal to the Federal Circuit.

In addition, we are submitting pre-trial and post-trial briefs, and expert reports from the case that may contain relevant information. Certain other pre-trial and post-trial briefs and expert reports contain or refer to information designated by the parties as being confidential pursuant to the Court-approved Protective Order in that case. Such materials are identified below. If the Examiner wishes to see any of the omitted materials, we will make a good faith effort to have any such materials removed from confidential status.

1. Post-trial Briefs Regarding Validity and Infringement

- a. Brief in Support of BSC's Motions for Judgment as a Matter of Law with Respect to U.S. Patent Nos. 5,643,312 and 5,879,370;
- b. Cordis' Answering Brief in Opposition to BSC's Motion for JMOL on the Fischell '312 and '370 Patents;
- c. BSC's Reply Brief in Support of BSC's Motion for Judgment as a Matter of Law With Respect to U.S. Patent Nos. 5,643,312 and 5,879,370;
- d. Opening Brief in Support of Cordis' JMOL Motion Against Boston Scientific on Claim 44 of the Palmaz '762 Patent and Claim 25 of the Fischell '370 Patent;
- e. BSC's Brief in Opposition to Cordis' JMOL Motion Regarding the Applicability of the Reverse Doctrine of Equivalents to Claim 25 of U.S. Patent No. 5,879,370;

- f. Reply Brief in Support of Cordis' Motion for JMOL Against BSC on Claim 44 of the Palmaz '762 Patent and Claim 25 of the Fischell '370 Patent.

2. Pre-and Post-trial Briefs Regarding Inequitable Conduct

- a. BSC's Post-Trial Brief in Support of Finding that U.S. Patent Nos. 5,643,312 and 5,879,370 Are Unenforceable Due to Inequitable Conduct;
- b. Cordis' Post-Hearing Answering Brief on BSC's Charge of Inequitable Conduct Concerning the '312 and '370 Patents [**WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER**];
- c. Cordis' Opening Brief in Support of its Motion to Supplement the Record on Inequitable Conduct [**WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER**];
- d. BSC's Reply Brief in Support of Finding That U.S. Patent Nos. 5,643,312 and 5,879,370 are Unenforceable Due to Inequitable Conduct;
- e. BSC's Brief in Opposition to Cordis' Motion to Supplement the Record on Inequitable Conduct and in Support of BSC's Cross-Motion to Strike Portions of Cordis' Inequitable Conduct Brief For Relying on Non-Record Evidence [**WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER**];
- f. Cordis' Combined Reply Brief in Support of its Motion to Supplement the Record on Inequitable Conduct, and Answering Brief in Opposition to BSC's Cross-Motion to Strike Portions of Cordis' Post-Hearing Brief on Inequitable Conduct [**WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER**];
- g. Brief in Support of Defendants' Motion for Summary Judgment of Unenforceability Due to Inequitable Conduct [**WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER**];

- h. Substitute Brief in Support of Defendants' Motion for Summary Judgment of Unenforceability Due to Inequitable Conduct **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
 - i. Cordis Corporation's Answering Brief in Opposition to BSC's Motion for Summary Judgment on Inequitable Conduct **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
 - j. Reply Brief in Support of Defendants' Motion for Summary Judgment of Unenforceability Due to Inequitable Conduct.
3. Pre-trial Briefs Regarding Claim Construction, Infringement and Validity
- a. Cordis Corporation's Opening Claim Construction Brief For the Fischell '312 and '370 Patents **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
 - b. Defendants' Markman Memorandum on Claim Construction;
 - c. Cordis Corporation's Answering Markman Brief on the Fischell '312 and '370 Patents **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
 - d. Brief in Opposition to Plaintiff's Opening Claim Construction Brief **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
 - e. Reply Brief in Support of Defendants' Markman Memorandum on Claim Construction **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
 - f. Cordis Corporation's Reply Brief on the Construction of Terms in the Fischell '312 and '370 Patents **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**

- g. Brief in Support of Defendants' Motion for Summary Judgment of Invalidity Under 35 U.S.C. Section 112, Paragraph 1 (Omitted Element) **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
- h. Cordis Corporation's Answering Brief in Opposition to BSC's Motion for Summary Judgment of Invalidity Under 35 U.S.C. §112, ¶1 (Omitted Element) **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
- i. Reply Brief in Support of Defendants' Motion for Summary Judgment of Invalidity Under 35 U.S.C. Section 112, Paragraph 1 (Omitted Element) **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
- j. Brief in Support of Defendants' Motion for Summary Judgment of Invalidity Under 35 U.S.C. Section 112, Paragraph 2 (Claim Indefiniteness) **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
- k. Cordis Corporation's Answering Brief in Opposition to BSC's Motion for Summary Judgment Under 35 U.S.C. §112, ¶2 (Indefiniteness) **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
- l. Reply Brief in Support of Defendants' Motion for Summary Judgment of Invalidity Under 35 U.S.C. Section 112, Paragraph 2 (Claim Indefiniteness);
- m. Cordis Corporation's Opening Brief in Support of its Motion for Summary Judgment on Infringement of the Fischell '370 Patent **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**

- n. Cordis Corporation's Opening Brief in Support of It's Motion for Summary Judgment on Infringement of the Fischell '370 Patent **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
 - o. Defendants' Brief in Opposition to Cordis' Motion for Summary Judgement of Infringement of the Fischell '370 Patent **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
 - p. Brief in Support of Defendants' Motion for Summary Judgment of NonInfringement **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
 - q. Cordis Corporation's Answering Brief in Opposition to BSC's Motion for Summary Judgment of NonInfringement of the Fischell '312 and '370 Patents **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
 - r. Reply Brief in Support of Defendants' Motion for Summary Judgment of Noninfringement
4. Expert Reports
- a. Expert Report of Nigel P. Buller, B.Sc., M.B., F.R.C.P. Concerning Infringement by BSC **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
 - b. Amended Expert Report of Nigel P. Buller, B.Sc., M.B., F.R.C.P. Concerning Infringement by BSC **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
 - c. Rebuttal Expert Report of Nigel Buller, B.Sc., M.B., F.R.C.P. **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**

- d. Supplemental Expert Report of Nigel P. Buller, B.Sc., M.B., F.R.C.P.
[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];
- e. Supplemental Reply Report of Nigel Buller, B.Sc., M.B., F.R.C.P.
[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];
- f. Expert Report of Lee P. Bendel **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
- g. Rebuttal Expert Report of Lee P. Bendel **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER];**
- h. Opening Expert Report of David C. Cumberland, M.D.;
- i. Rebuttal Expert Report of David C. Cumberland, M.D.;
- j. Supplemental Expert Report of David C. Cumberland, M.D.;
- k. Opening Expert Report of Andrew S. Douglas, Ph.D.;
- l. Rebuttal Expert Report of Andrew S. Douglas, Ph.D.;
- m. Supplemental Expert Report of Andrew S. Douglas, Ph.D.; and
- n. Rebuttal Expert Report of Alan J. Snyder, Ph.D **[WITHHELD AS HIGHLY CONFIDENTIAL UNDER THE PROTECTIVE ORDER].**

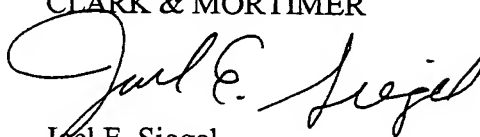
We are also submitting BSC's Notice Pursuant to 35 U.S.C. § 282. BSC submitted this list of prior art information for both the 97-550 (SLR) action which involved unrelated patents, and the 98-197 (SLR) action, which involved the '312 and '370 patents, without distinguishing between the two sets of patents. We are further submitting the jury verdicts; the District Court's September 7, 2000 Order on claim construction; and the Court's November 1, 2000 Orders on the summary judgment motions. Finally, we are submitting the deposition transcripts of Robert E. Fischell, and Morton Rosenberg.

Should the Examiner require any additional information, the undersigned attorney will immediately respond upon receipt of any such request.

Respectfully submitted,

FOR: WOOD, PHILLIPS, KATZ,

CLARK & MORTIMER

A handwritten signature in cursive script, appearing to read "Joel E. Siegel".

Joel E. Siegel

Registration No. 25,440

Wood, Phillips, Katz, Clark & Mortimer
Citicorp Center, Suite 3800
500 W. Madison Street
Chicago, IL 60661
(312) 876-1800